IN THE HIGH COURT OF BOMBAY AT GOA
***

FIRST APPEAL NO. 182 Of 2003

1. Mr. Hanuman Mahadeo
   Narvekar alias Shirodkar,
   son of Mahadev Narvekar,
   major of age, married,
   r/o Housing Board Plot
   No.70, Mapusa, Goa,

2. Mr. Shankar Atmaram Narvekar
   alias Shirodkar, son of
   Atmaram Narvekar, major of
   age, married, r/o Ansabhat,
   Mapusa, Bardez, Goa,

3. Mr. Tulsidas Atmaram Narvekar
   alias Shirodkar, son of
   Atmaram Narvekar, major
   of age, married, r/o
   Housing Board, Plot No.50,
   Mapusa, Goa. ...Appellants.

Versus

1. Allahabad Bank, a Banking
   Company, having its
   registered office at 2,
   Netaji Subhash Road,
   Calcutta-1, represented
   by its Chief Executive Officer,

2. Allahabad Bank, a banking
   Company having its branch office
   at Mapusa, Goa, represented by
   its Branch Manager, Satyaheera
   Bldg., Mapusa, Goa. ...Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for the appellants.

Shri R. G. Ramani, advocate for the respondents.

CORAM : SMT. NISHITA MHATRE, J.

DATE OF RESERVING THE ORDER : 22nd January, 2004.

DATE OF PRONOUNCING THE ORDER : 12th February, 2004.

ORAL ORDER

The short question involved in the present Appeal is whether premises which are less than fifteen years old are

excluded from the protection of the Goa, Daman and Diu Buildings (Rent, Lease & Eviction) Control Act, 1968, (hereinafter referred to as "the Rent Control Act" for short).

The facts in the present Appeal are not disputed. The appellants who are the original plaintiffs, filed a suit before the Court of the Civil Judge, Senior Division, Mapusa, on 28th November, 1997. The main contentions raised in the plaint were that the appellants being owners of a commercial building situated at Mapusa, had leased part of the premises to the defendants by a deed of lease dated 30th November, 1985. The building in which the leased premises was situated was constructed in the year 1985. The lease was for a period of five years commencing from lst March, 1985, and for a monthly rent of Rs.8,645/-. The lease was terminated with effect from the midnight of 30th September, 1997, by notice of 14th August, 1997. The respondents were requested to hand over vacant possession of the demised premises to the appellants on lst October, 1997. As the respondents failed to deliver possession of the demised premises, the appellants instituted the civil suit before the Court of the Civil Judge, Senior Division, Mapusa, for eviction and for a further decree for mesne profits at the rate of Rs.30,000/- per month, from lst October, 1997, till the date of eviction. Issues were framed in the suit after the respondents had filed their written statement. One of the issues was whether

the defendants proved that the civil Court had no jurisdiction to try and entertain the suit between the landlord and the tenant, in view of the provisions of the Rent Control Act. Evidence was led by both the appellants and the respondents. By Judgment and Decree of 30th April, 2003, the Civil Judge, Senior Division, Mapusa, dismissed the suit of the appellants only on the ground that the Rent Control Act was applicable and, therefore, the civil Court had no jurisdiction to entertain the suit. The Court also took the view that the appellants did not require the premises for their bona fide use and occupation. Aggrieved by this Judgment and Order, the appellants filed the present appeal before this Court.

2. Shri Lotlikar, learned counsel for the appellants, submitted that the provisions of the Rent Control Act are not at all applicable in the present case as the provisions of Section 3(c) of the Act exempts newly constructed buildings for a period of fifteen years from the date of their completion from the purview of the Act. Undisputedly, the building was completed in 1985 and, therefore, the exemption granted under the Act continued till the year 2000. The suit was instituted in 1997 when the exemption still operated qua the appellants' building and, therefore, eviction of the respondents was sought under the provisions of the Transfer of Property Act. The learned counsel further submitted that the suit filed before the

Civil Judge, Senior Division, Mapusa, was not barred by the provisions of the Rent Control Act. He relied on the judgments in the case of **D.C. Bhatia & Ors. vs. Union of India & Anr.**, (1995)1 SCC 104, **Parripati Chandrashekharrao & Sons vs. Alapati Jalaiah**, AIR 1995 SC 1781, **Om Parkash Gupta vs. Dig Vijendrapal Gupta**, AIR 1982 SC 1230 and **Lal Chand & Anr. vs. District Judge, Agra & Ors.**, (1999) 8 SCC 351, **Ramesh Chandra vs. III Additional District Judge & Ors.**, (1992)1 SCC 751, **Saleem vs. District Judge Muzaffarnagar & Ors.**, (1998)7 SCC 242, (1998)8 SCC 351, **Ram Saroop Rai vs. Smt. Lilavati,** AIR 1982 945, **Malpe Vishwanath Acharya & Ors. vs. State of Maharashtra & Anr.**, (1998) 2 SCC 1.

3. On the other hand, Shri Ramani for the respondents, submitted that the Rent Control Act would be applicable as the suit premises were not in a "newly constructed building". He urged that for a proper interpretation, Section 3(c) had to be construed to mean that those buildings which were completed after the amendment came into force would be exempt from the provisions of the Rent Control Act. He submits that had the building in which the suit premises were situate been constructed after the amendment which came into force in 1994, the exemption would be applicable. Shri Ramani placed reliance on the judgment in **M/s. Punjab Tin Supply Co., Chandigarh vs. Central Government & Ors.**, AIR 1984 SC 87. He urged that it is necessary to consider the object of the amendment while

interpreting the same. He submitted that the object of the amendment was that landlords would have an incentive for constructing buildings and would be able to avail of the exemption from the operation of the Rent Control Act for a period of fifteen years after the construction was completed. This amendment, according to the learned counsel would be applicable only prospectively and the owners of buildings constructed prior to the amendment, though less than fifteen years old, could not claim any exemption.

4. In order to appreciate the submissions made at the Bar, it would be necessary to set out Section 3, of the Rent Control Act, which reads thus:-

> **3. Act not to apply to certain buildings.-**
>
> (1) Nothing in this Act shall apply -
>
> (a) to any building belonging to the Government, or a State Housing Board, or a local authority, or Industrial Development Corporation;
>
> (b) to any building vested in the Custodian of Evacuee Property;
>
> (c) to any newly constructed building for a period of 'fifteen' years from the date of its completion;
>
> (d) as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of a building, the possession of which has been taken over under section 6.
>
> (2) Where the Administrator is of the opinion that it is necessary or expedient in the public interest so to do, he may, by notification in the official Gazette, and subject to such conditions, if any, as he may

> specify in the notification, exempt any building or class of building from all or any of the provisions of this Act."

Prior to the Amendment of 1994, Section 3(c) of the Rent Control Act was applicable in case of newly constructed buildings "for a period of four years" from the date of its completion. Therefore, by the Amendment Act, the word "four" has been substituted by "fifteen". To construe this section to mean, as Mr. Ramani has done, that only those buildings which were built after the amendment came into force would be exempt from the application of the Act, would be incorrect. There is nothing in the Section to suggest that fifteen years would have to be counted prospectively from the date of the amendment. For that matter, even prior to the amendment there was nothing in the Act to indicate that the Act was applicable to buildings which had been constructed four years after the Act came into force. The term "newly constructed building" would, obviously relate to those buildings which had been constructed but had not completed fifteen years of age. Had the Legislature thought it otherwise, the Section would have read differently and the Legislature would have made it clear that it was only those buildings which had been constructed after the commencement of the Act or the amendment came into force, which would be considered as newly constructed buildings and the period was to be construed from the date of its completion.

5. In the case of **D. C. Bhatia** (supra) the Apex Court considered the provisions of the Delhi Rent Control

Act. By the Amendment Act the legislature had withdrawn the protection enjoyed by tenants who were paying Rs.3,500/- or above as monthly rent. Those tenants who were sought to be evicted prior to the Amendment Act, could have taken advantage of the provisions of the Act to resist such eviction by the landlord. By the statute, the Legislature had decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. Section 3 of the Delhi Rent Control Act reads thus:-

> **"3. Act not to apply to certain premises.** -
>
> Nothing in this Act shall apply;
>
> (a) to any premises belonging to the Government;
>
> (b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government;
>
> Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy.
>
> (c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or
>
> (d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction."

While considering the provisions of the Delhi Rent Control Act, the Apex Court held as follows:-

> "52. We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by various State Legislatures, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenants from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The Legislature by the Amendment Act No.57 of 1988 has partially repealed the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the Legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs.3500 or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment. The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C.J., in the case of **Kay vs. Goodwin** : (ER p.1405)
>
> > 'The effect of repealing a statute is to obliterate it as completely from the records of the parliament as if it had never been passed; and, it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law'."

Therefore, the Apex Court took the view that the Legislature had decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Act, but a right to take advantage of the provisions of the Act remained so long as the Act was in force. The tenants had

not acquired any vested right in the properties occupied by them under the statute. The Apex Court was of the view that the provisions of Section 3(c) would apply to the premises which had already been let out on monthly rent in excess of Rs.3500/- when the amendment made in 1988 came into force.

The present case also is one where the respondents could not have acquired a vested right to remain in the suit premises. The landlord's right had been curtailed earlier as the Rent Control Act was applicable to those buildings which were less than four years of age. By the Amendment Act the word "four" has been substituted by the word "fifteen". Therefore, in my view the protection granted to the tenant can be availed of only after the building completes fifteen years of age. The right of the landlord to sue the tenant for eviction and for mesne profits has not been done away with or curtailed and the landlord could always initiate proceedings under the Transfer of Property Act, if the buildings were less than fifteen years of age, as was done in the present case.

6. In the case of **Parripati Chandrasekharrao & Sons** (supra), the Apex Court considered the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act and reiterated the view taken in **D.C. Bhatia's** case. The Apex Court took the view that the rights which accrued to the landlord under the common law and the protection afforded

to the tenant under the special protective legislation continued so long as the landlord's rights were suspended during the operation of the protective legislation. The protection granted by the Rent Control Act did not create any vested right in the tenant. Therefore, there is no doubt that the respondents herein have no vested right. Undoubtedly, prior to the amendment, the tenant had certain rights and remedies under the Act once the building was four years old. However, these rights were lost once the protection was taken away by the Amendment Act. It is only after the building has been in existence for fifteen years that the tenant can now seek protection under the Rent Control Act.

7. In **Om Prkasah Gupta's** case (supra), the Apex Court considered the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act. While interpreting Section 2(2), the Apex Court held that there was no ambiguity in the language of Sub-section (2) of Section 2 and, in the absence of any ambiguity, there was no question of taking any external aid for interpreting the Sub-section. Section 2(2) of the U.P. Act contemplates that the Act would not apply to a building during a period of ten years from the date on which its construction was completed. It nowhere stated that the building should have been constructed after the enforcement of the Act. The Apex Court took the view that to interpret it in such a manner would be adding words to the

Sub-section, which was impermissible. In the case at hand also, the interpretation placed by the learned counsel appearing for the respondents would mean that one would have to add certain words to Section 3(c) of the Rent Control Act. Section 3(c) is unambiguous and must be understood as meaning that the Act would not apply to a building for a period fifteen years from the date of its completion.

8. Similarly, in the case of Ramesh Chandra (supra) the Apex Court considered the same provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ("U.P. Act"). The Apex Court was of the view that whether a building was constructed before or after the commencement of the Act, was not relevant for computing the period of ten years from the date of construction under Section 2(2).

9. The same provisions of law were considered by the Apex Court in the case of **Saleem vs. District Judge. Muzaffarnagar & Ors.,** (supra). The Apex Court held that under the Explanation I to Section 2(2) of the U.P. Act, the only date which could have been taken into consideration for deciding the question whether ten years had elapsed from the date of construction of the building, was the date of assessment. Ten years had to be counted from that date. While construing Section 2(2) of Explanation I to the U.P. Rent Control Act, the Apex Court held that the burden would

be on the landlord to prove that the construction was new and the construction was exempt from the provisions of the Act. Municipal records which could be produced by the landlord would normally determine the date of construction and ten years would run from that date.

10. In the case of **Lal Chand & Anr.** (supra), the Apex Court again considered the provisions of the U.P. Act. While interpreting the word "construction", contained in the Explanation to Sub-section (2) of Section 2, the Apex Court held that ten years' exemption would spread over from the date of first assessment, for a period of ten years.

11. The Rent Control Act also makes it clear under Section 3(c) that the Act is not to apply to buildings for fifteen years from the date of its completion. The Act does not in any manner qualify the date of completion to mean completion after the Act came into force, or the Amendment Act came into force. To construe the provisions in the manner signed by Shri Ramani would be to do violence to the section 9 to add words to the section which is otherwise unambiguous.

12. The Apex Court in the case of **Malpe Vishwanath Acharya & Ors. vs. State of Maharashtra & Anr.** (supra), considered what the approach of the Court should be while considering the provisions of a social legislation like the

Rent Control Act. The Apex Court observed thus:-

> "29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society."

13. Reliance placed by Shri Ramani on the **M/s. Punjab Tin Supply Co. vs. Central Government & Ors.,** (supra) is misplaced. In that case the Apex Court considered whether a Notification granting exemption to a newly constructed building was made with retrospective effect. The Apex Court took the view that there is a presumption against laws being applicable retrospectively when they affect substantive rights of parties. If they affect vested rights and obligations, the laws would operate prospectively unless the legislative intent was clear and compulsive. In the present case, as held by the Apex Court in the cases of **D.C. Bhatia** and **Parripati Chandrasekharrao,** the tenant does not acquire a vested right and it is only the protection granted by the Rent Control Act which is curtailed for a period of fifteen years from the date of completion of a building.

14. Thus, the submission of the respondents cannot be accepted. The Judgment and Decree of the Civil Judge, Senior Division, Mapusa, is set aside. The respondents cannot be considered as statutory tenants duly protected by the Rent Control Act. There is no doubt that the Civil Court

had jurisdiction to entertain and try the suit. The trial Court has completely misdirected itself by assuming that the Rent Control Act has created a vested right in the tenant and that the protection afforded by the Rent Control Act would continue in respect of the suit premises. The Judgment and Decree is therefore set aside. The Appeal is allowed.

SMT. NISHITA MHATRE, J.

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